



BOARD OF ENGINEERS, ARCHITECTS,
SURVEYORS AND LANDSCAPE ARCHITECTS
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Professional)
Engineer's License of)
FRANK J. LYON,)
Respondent.)
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ENG-2019-4-L
BOARD'S FINAL
ORDER

BOARD'S FINAL ORDER

On or about January 4, 2021, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Board of Engineers, Architects, Surveyors and Landscape Architects ("Board") and to the parties. Although the parties were provided with the opportunity to file written exceptions to the recommended order, no exceptions were filed.

Upon review of the entire record of this proceeding, the Board adopts the Hearings Officer's recommended order as the Board's Final Order. Accordingly, the Board finds and concludes that Respondent violated HRS §§ 436B-19(8), 436B-19(14) and 464-10. For the violations found, the Board orders that Respondent's license be revoked and that Respondent be required to immediately submit all indicia of licensure as a professional engineer in the State of Hawaii to the Executive Officer of the Board. The Board also orders that Respondent pay a fine of \$3,000.00.

DATED: Honolulu, Hawaii April 29, 2021

Ken Ota

KEN OTA, ~~Chairperson~~
Public Member, Maui

Dan Hirota

~~DAN HIROTA, Vice-Chairperson
Land Surveyor~~

Alan J. Inaba

~~ALAN INABA
Land Surveyor, Hawaii~~

Ron E. Iwamoto

~~RON IWAMOTO
Structural Engineer~~

~~JOEL KUROKAWA
Landscape Architect~~

Clayton Pang

~~CLAYTON PANG
Electrical Engineer~~

Absent

~~MARC VENTURA
Architect, Kauai~~

Brian

~~BRIAN FUJIWARA, Vice
Architect Chairperson~~

~~JAY ISHIBASHI
Public Member~~

~~KEVIN KATAYAMA
Mechanical Engineer~~

Benedict Lee

~~BENEDICT LEE
Landscape Architect~~

~~RICHARD SUZUKI
Civil Engineer~~

Robert Yumol

~~ROBERTO YUMOL
Architect~~

Signature: *Ar. Yumol*

Email: Privacy Information

eFiled 02/25/2021 2:36 pm

HEARINGS OFFICE



BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS AND LANDSCAPE ARCHITECTS
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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Respondent.

ENG-2019-4-L

ERRATA

Administrative Hearings Officer:
Rodney K.F. Ching

ERRATA

Page 1, the filing date of the undersigned Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order filed on January 4, 2020 in the above-referenced matter should read as follows:

"2021 Jan 4 A 9:04"

DATED: Honolulu, Hawaii, February 25, 2021.

A handwritten signature in cursive script that reads "Rodney K.F. Ching".

RODNEY K.F. CHING
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

2020 JAN -4 A 9 04

HEARINGS OFFICE



BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS, AND LANDSCAPE ARCHITECTS
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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Respondent.

ENG-2019-4-L

HEARINGS OFFICER'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On June 29, 2020, the Department of Commerce and Consumer Affairs ("DCCA") through its Regulated Industries Complaints Office ("RICO") (collectively referred to as "Petitioner"), filed a Petition for Disciplinary Action ("Petition") against the professional engineer's license of Frank J. Lyon ("Respondent"). The matter was duly set for hearing and the Notice of Hearing and Pre-Hearing Conference was transmitted to the parties.

On October 12, 2020, Respondent was personally served at 6000 NE 80th Ave., Portland, OR 97218 (Northwest Regional Re-Entry Center) with the following documents: 1) Petition for Disciplinary Action Against Professional Engineer's License; Demand for Disclosure; 2) Notice of Hearing and Pre-Hearing Conference; 3) Notice of Telephonic Pre-Hearing Conference; 4) Notice of Rescheduled Hearing and Pre-Hearing

Conference; and 5) Notice of Telephonic Pre-Hearing Conference. On November 23, 2020, this matter came on for telephonic pre-hearing conference before the undersigned Hearings Officer. Respondent did not appear at the pre-hearing conference, send a representative or request a continuance.

On or about November 23, 2020, the Notice of Telephonic Hearing was mailed to Respondent at 6000 NE 80th Ave., Portland, OR 97218.

On December 21, 2020, this matter came on for telephonic Hearing before the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, 436B, 464 and 831 and Hawaii Administrative Rules ("HAR") Title 16 Chapters 115 and 201. Ivy Y. Kim, Esq. appeared on behalf of Petitioner. Respondent did not appear, send a representative or request a continuance.

The Hearings Officer took administrative notice of the records and files in this matter. Petitioner's Exhibits 1 to 5 were admitted into evidence.

Having heard the argument of counsel, and having considered the evidence, records and files herein, the Hearings Officer hereby renders the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

If any of the following findings of fact shall be deemed to be a conclusion of law, the Hearings Officer intends that every such finding of fact shall be construed as a conclusion of law.

1. The DCCA records show that Respondent was issued professional engineer's license PE-8256 on August 30, 1994 which expired on April 30, 2020. See

Exhibit 1, Certified screen captures of Respondent's professional engineer licensing information.

2. On January 16, 2019, Respondent was charged with one count of Conspiracy to Violate the Federal Corrupt Practices Act and to Pay a Bribe to an Agent of an Organization Receiving Federal Funds, in violation of 18 U.S.C. §371, in the U.S. District Court for the District of Hawaii, case name: *USA v Frank James Lyon*, Cr. No. 19-00008 SOM. See Exhibit 2, Information.

3. On January 22, 2019, a Memorandum of Plea Agreement was filed in *USA v Frank James Lyon*, Cr. No. 19-00008 SOM. See Exhibit 3, Memorandum of Plea Agreement.

4. On or about February 3, 2019, an Acceptance of Plea of Guilty, Adjudication of Guilt and Notice of Sentencing was filed in *USA v Frank James Lyon*, Cr. No. 19-00008 SOM. See Exhibit 4, Acceptance of Plea of Guilty, Adjudication of Guilt and Notice of Sentencing.

5. On or about May 13, 2019, Judgment was entered against Respondent in *USA v Frank James Lyon*, Cr. No. 19-00008 SOM. The U.S District Court sentenced Respondent, among other things, to thirty (30) months imprisonment. See Exhibit 5, Judgment in a Criminal Case.

III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be a finding of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

Petitioner has the burden of proof by a preponderance of the evidence:

Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

See HRS §91-10(5) (emphasis added.)

The issue presented for determination is whether Petitioner has proven the allegations contained in the Petition by a preponderance of the evidence.

At the outset, the Hearings Officer finds and concludes that Respondent had proper notice of the Hearing date, time and manner, as well as the Pre-hearing conference date, time and manner, and failed to appear at either.

A. VIOLATIONS ALLEGED

Petitioner alleges that Respondent violated the following statutes and rules:

- a. HRS § 436B-19(8) (failing to meet or maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity);
- b. HRS § 436B-19(14) (having a criminal conviction of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation);
- c. HRS § 464-10 (misconduct in the practice of the profession, or violating the chapter or rules of the board); and
- d. HAR § 16-115-10(5) (misrepresentation, deceit, fraud, gross negligence, and other offenses related to misconduct of the licensee's practice).

See Petition.

In relevant part, those statutes and rule(s) provide as follows:

§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or

condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

(8) Failing to meet or maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

(14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation;

§464-10 Licensees; suspension or revocation of licenses; fines; hearings. In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board.

§16-115-10 Misconduct in the practice. Misconduct in the practice of the profession of engineering, architecture, land surveying, or landscape architecture means without limitation the following:

(5) Misrepresentation, deceit, fraud, gross negligence, and other offenses relating to misconduct of the licensee's practice.

B. VIOLATIONS FOUND

The Information alleges, among other things, that from in or around 2006 through 2016, Respondent, together with his co-conspirators, provided bribe payments to Federated States of Micronesia ("FSM") officials totaling at least approximately \$200,000 in order to obtain approximately \$7.8 million in contract payments. See Exhibit 2 at page 4. The Information also alleges that from in or around 2011 through 2016,

Respondent, together with his co-conspirators, provided bribe payments in cash to "Co-Conspirator 3" for distribution to State Agency officials, totaling at least approximately \$240,000 in order to obtain a \$2.5 million contract. Id.

On January 22, 2019, Respondent voluntarily entered a plea of guilty to the Information and admitted to the factual allegations contained in the Information. See Exhibit 3.

On or about February 3, 2019, the Court accepted Respondent's plea of guilty, found Respondent guilty and set the matter for sentencing. See Exhibit 4.

On or about May 13, 2019, Judgment was entered against Respondent. Respondent was sentenced, among other things, to thirty (30) months imprisonment. See Exhibit 5.

The Hearings Officer finds and concludes that providing bribes to FSM and State Agency in order to obtain engineering contracts constitutes professional misconduct and unfair dealing at the highest levels as defined in HAR § 16-115-10(5), in violation of HRS §§ 436B-19(8) and 464-10. The Hearings Officer also finds and concludes that Respondent has a criminal conviction of a penal crime directly related to the qualifications, functions or duties of a professional engineer, in violation of HRS § 436B-19(14).

IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Board find and conclude that Respondent violated:

a. HRS § 436B-19(8) (failing to meet or maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity);

b. HRS § 436B-19(14) (having a criminal conviction of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation); and

c. HRS § 464-10 (misconduct in the practice of the profession, or violating the chapter or rules of the board); and

With regard to sanctions, Petitioner requests that Respondent's license be revoked and that Respondent be ordered to pay a \$3,000 fine, \$1,000 for each statutory violation. The Hearings Officer agrees with Petitioner.

HRS § 464-10 authorizes the Board to revoke the license of any licensee and/or fine the licensee for violating this chapter.

§464-10 Licensees; suspension or revocation of licenses; fines; hearings. In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board.

Any licensee who violates this chapter or the rules adopted pursuant thereto may also be fined not less than \$500 nor more than \$1,000 per violation.

HRS § 464-10 (emphasis added.)

Respondent's conduct with regard to the above licensing laws is appalling. Over the course of ten (10) years, Respondent conspired with others to bribe government officials in order to obtain engineering contracts. Accordingly, for the multiple violations found, the Hearings Officer recommends that Respondent's license be revoked and that Respondent be required to immediately submit all indicia of licensure as a professional engineer in the State of Hawaii to the Executive Officer of the Board. The Hearings Officer

also recommends that Respondent be ordered to pay a \$3,000.00 fine, \$1,000.00 for each violation.

DATED at Honolulu, Hawaii: January 4, 2021.



RODNEY K.F. CHING
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

In Re: Professional Engineer's License of Frank J. Lyon, ENG-2019-4-L,
Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order